COURT OF APPEALS
DECISION
DATED AND FILED

October 11, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1491

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CLARK E. VARNELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Anderson, JJ.

¶1 NETTESHEIM, J. Clark E. Varnell appeals pro se from a postconviction order rejecting his challenge to the repeater sentencing provisions of two 1985 judgments of conviction for drug-related offenses. Varnell contends that the underlying conviction which formed the basis for the repeater allegation

was not sufficiently established. He also contends that his postconviction counsel was ineffective for failing to earlier raise this issue. We reject Varnell's arguments on the same grounds noted by the trial court—Varnell admitted to the prior conviction when he entered his guilty pleas to the charges in this case. We affirm the postconviction order.

¶2 The relevant facts are brief and undisputed. When Varnell entered his pleas of guilty on May 16, 1985, the trial court expressly asked him if he had previously been convicted of the felony offense of possession of heroin on April 13, 1984, the conviction asserted as the basis for the repeater allegation. Varnell answered "yes."

¶3 Varnell contends that the date of the prior conviction was incorrect. He points to the fact that the original conviction for the underlying offense was entered in 1981. However, that judgment was later reversed and the matter was remanded to the trial court. Thereafter, an amended judgment was entered on April 13, 1984. This was the date of conviction for the repeater offense recited in the information in the instant case. It also was the date used by the trial court when questioning Varnell about the prior conviction at the change of plea hearing in this case.

¶4 Under WIS. STAT. § 973.12(1) (1997-98), an individual may be sentenced as a repeater if he or she either admits the prior conviction or the conviction is proved by the State. *See* ***State v. Liebnitz***, 231 Wis. 2d 272, 284, 603 N.W.2d 208 (1999). Here, the colloquy between the trial court and Varnell clearly establishes that the trial court referred to the correct date of conviction for the underlying repeater offense and that Varnell admitted to the prior conviction.

Therefore, the trial court properly rejected Varnell's postconviction challenge to the repeater portion of the sentences imposed.[1]

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

[1] In addressing the merits of Varnell's postconviction motion, the trial court noted that it was "[b]ypassing serious jurisdiction issues …." We agree. Varnell's postconviction motion came nearly fifteen years after the judgments of conviction were entered in this case. The court could have rejected Varnell's motion as untimely under ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). So could we, but we do not. Instead, seeking complete finality, we address the issue on the merits.